# DEPARTMENT OF PERSONNEL & ADMINISTRATION



HIPAA Policy No.	3
Current Effective Date	May 1, 2006
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**HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT** 

BUSINESS ASSOCIATES

Approved by: Jeffrey C. Schutt

Date: 455

## I. Purpose

To establish guidelines for identifying business associates of the Department of Personnel and Administration's (DPA) designated health care components, and to ensure that DPA obtains the appropriate written assurances regarding HIPAA privacy and security from its business associates. Also to establish guidelines for determining when DPA is a business associate, and to ensure that any obligations placed upon DPA as a business associate are appropriate.

## II. Policy

- A. Business associates are required to maintain the privacy and security of protected health information they receive from a covered entity, receive on behalf of a covered entity, or create on behalf of a covered entity, to the same extent that the covered entity must maintain the privacy and security of protected health information. When a DPA health care component (DPA-HCC)<sup>1</sup> is contracting with a business associate, DPA must obtain written assurances from the business associate that the business associate will comply with the provisions for business associates found in the HIPAA Privacy and Security Rules, including assurances that the business associate will:
  - implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of protected health information that it handles on behalf of DPA;
  - ensure that any agent, including a subcontractor, to whom it provides such information agrees to implement reasonable and appropriate safeguards to protect the information;
  - report to DPA any security incident of which it becomes aware; and
  - authorize termination of the contract if DPA determines that the business associate has violated a material term of the contract.<sup>2</sup>
- B. Before any solicitation under the State Procurement Code can be published by or on behalf of a DPA-HCC, the employee preparing the solicitation must determine whether a business associate relationship will be created by the resulting contract or purchase order. To do this, ask the following questions, which are based on the definition of business associate found in the HIPAA regulations. If the answer to either of these questions is yes, then the other party is a business associate.
  - Does the other party perform any function or activity for a DPA health care component that involves the use or disclosure of protected health information?

<sup>&</sup>lt;sup>1</sup>For a list of DPA health care components, see HIPAA Policy No. 1, Documentation of Designation of DPA as a Hybrid Entity.

<sup>&</sup>lt;sup>2</sup> Generally, a memorandum of understanding between two state agencies cannot be terminated, if one agency is statutorily required to provide services to the other agency. The business associate agreement will contain dispute resolution procedures rather than a termination clause if termination of the MOU is inconsistent with the statutory obligations of either party.

• Does the other party provide legal, actuarial, accounting, consulting, data aggregation, management, administrative, accreditation, or financial services for a DPA health care component that involves the disclosure of protected health information?

DPA's HIPAA Compliance Officer (HCO) can help in making this determination.

- C. 1. If it is determined that a business associate relationship will result and the solicitation will be published in the form of a request for proposal (RFP), the employee preparing the RFP is responsible for including the appropriate business associate provisions in the RFP. The business associate provisions can be part of the model contract attached to the RFP, an addendum to the model contract, or a separate business associate agreement attached to the RFP.
  - 2. If it is determined that a business associate relationship will result and the solicitation will be published in the form of an invitation to bid or documented quote, the employee preparing the solicitation is responsible for specifying in the solicitation that a business associate agreement will be one of the conditions of doing business with the DPA-HCC.
- D. 1. If it is determined that a business associate relationship will be created and the RFP process was used, the employee negotiating the contract after a vendor is selected will be responsible for ensuring that the appropriate business associate provisions are included in the contract, in an addendum to the contract, or in a separate business associate agreement.
  - 2. If it is determined that a business associate relationship will result and the solicitation was an invitation to bid or documented quote, the employee responsible for the solicitation will also be responsible for obtaining a business associate agreement from the other party before requesting a purchase order from the DPA accounting unit.
- E. Any deviations from the standard business associate provisions must be reviewed and approved by DPA's HCO before the provisions can be included in a business associate agreement.
- F. If the business associate is another government agency that is required by law to perform functions for DPA or provide services to DPA that would make it a business associate, a memorandum of understanding (MOU) is the type of document that shall be used.
- G. It is also possible for DPA to be a business associate of a covered entity. To determine whether DPA is a business associate, ask the following questions, which are based on the definition of business associate found in the HIPAA regulations. If the answer to either of these questions is yes, then DPA is a business associate.
  - Does DPA perform any function or activity for a covered entity that involves the use or disclosure of protected health information?
  - Does DPA provide legal, actuarial, accounting, consulting, data aggregation, management, administrative, accreditation, or financial services for a covered entity that involves the disclosure of protected health information?

DPA's HCO can help in making this determination.

H. As a business associate, DPA shall not take upon itself responsibilities broader than those required of a business associate under HIPAA without the prior approval of DPA's HCO. In all business associate agreements, regardless of form, in which DPA is the business associate, the obligations agreed to by DPA must be limited to those specified by DPA's HCO.

#### III. Procedures

Unless otherwise specified by DPA's HCO, each Division (or unit within a Division, if more appropriate) will develop its own procedures for complying with this policy.

### IV. Definitions/Abbreviations

Business associate: (1) A person or entity not a member of DPA's workforce that performs a function or activity on behalf of DPA that involves the use or disclosure of protected health information. Examples of such functions and activities include claims processing or administration; data analysis, processing or administration; utilization review; quality assurance; and benefit management; or (2) a person or entity not a member of DPA's workforce that provides services to DPA involving the use or disclosure of protected health information. Examples include legal, actuarial, accounting, consulting, management, administrative, and financial services.

Health care component: A unit within DPA whose business activities include HIPAA covered functions and that has been designated by DPA as a health care component in DPA's official designation of itself as a hybrid entity. See also Policy No. 1, Documentation of Designation of DPA as a Hybrid Entity.

# V. Revision History

Date	<u>Description</u>
May 1, 2006	Original document

## VI. References/Citations

Security Rule 45 CFR 164.308(b)(1) 45 CFR 164.308(b)(4) 45 CFR 164.314(a)(1) 45 CFR 164.314(a)(2)	Business Associate Contracts and Other Agreements Written Contract or Other Arrangement Business Associate Contracts or Other Arrangements Business Associate Contracts
Privacy Rule 45 CFR 164.502(e)(1) 45 CFR 164.502(e)(2) 45 CFR 164.504(e)(1) 45 CFR 164.504(e)(2) 45 CFR 164.504(e)(3) 45 CFR 164.504(e)(4)	Disclosures to Business Associates Documentation Business Associate Contracts Business Associate Contracts Other Arrangements Other Requirements for Contracts